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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

DANNY LEE MITCHELL,

Plaintiff

v.

AXCAN SCANDIPHARM, INC., a corporation

Defendant.

CIVIL ACTION No.

1

05-0243

COMPLAINT

Jury Trial Demanded

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1. PRELIMINARY STATEMENT

This is an action for wage loss, compensatory and punitive damages, as well as declaratory and injunctive relief, costs and attorney fees brought by the plaintiff, Danny Lee Mitchell to seek redress for discrimination because of sex and disability suffered by her in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e, et seq., and the Pennsylvania Human Relations Act, 43 P.S. § 951, et seq. Specifically, plaintiff alleges that she was unjustly terminated from her employment when she announced her intention to transition from male to female.

II. JURISDICTION

Jurisdiction is founded upon 28 U.S.C. § 1331, 1337, 1343, 1367; 42 U.S.C. § 2000e-5(f)(3), as well as 28 U.S.C. § 2201 and 2202. The jurisdiction of the Court is invoked under the doctrine of supplemental jurisdiction, for the claims brought under the aforementioned

Pennsylvania Human Relations Act. All unlawful practices alleged below were committed within the Western District of Pennsylvania.

Plaintiff was discharged from her employment on or about January 12, 2004. She filed a timely charge with the Equal Employment Opportunity Commission.

On or about November 27, 2004, she received from the Equal Employment Opportunity Commission a notice of dismissal with appropriate notice of her legal rights.

III. PARTIES

1. Plaintiff, Danny Lee Mitchell, is a white transgender female, 38 years of age, who resides at 52 Laurel Avenue, Washington, PA 15301, which is situate in the Western District of Pennsylvania.

2. Axcan Scandipharm, Inc. is a Delaware corporation with principal office and place of business at 22 Inverness Center Parkway, Birmingham, Alabama 35242.

3. At all times relevant to the claims for relief presented herein defendant Axcan was an employer subject to and within the meaning of Title VII of the Civil Rights Act of 1964, as amended.

4. Axcan does business internationally, nationally and within the counties of Western Pennsylvania including but not limited to Allegheny, Washington, Erie, Westmoreland, Jefferson and Fayette Counties, all of which are situate within the jurisdiction of this court.

5. Plaintiff began employment with defendant Axcan on or about February 14, 1999. Plaintiff's job title was Sales Representative.

6. Plaintiff suffers from a gender identity disorder, ("GID"), a medical problem recognized and diagnosed by the American Psychiatric Association in the *Diagnostic and Statistical Manual of Mental Disorders*, 4th edition.

7. The recommended treatment for gender identity disorder may include the use of hormones, cross dressing in clothing of the gender identity which the individual rightly feels is that person's own appropriate identity, and sex reassignment surgery.

8. In Europe and North America most physicians today who treat gender identity disorder follow the guidelines established by the Harry Benjamin International Gender Dysphoria Association (hereinafter "HBIGDA"). The HBIGDA guidelines require that a person have one year of real life experience in the gender presentation to which they wish to transition before they undergo sex reassignment surgery.

9. The plaintiff's physical gender is male; however, the plaintiff's brain gender is female. Plaintiff is one of those individuals referred to in the medical community as a transsexual.

10. Plaintiff has been under medical treatment for gender identity disorder, has been approved for the use of hormones, and is a candidate for sex reassignment surgery.

11. Plaintiff successfully performed the position of Sales Representative for the employer defendant Axcan.

12. In the fall of 2003, plaintiff determined to begin required real life experience as mandated by the HBIGDA guidelines, presenting as a female as a prerequisite to sex reassignment surgery.

13. Plaintiff indicated her intent to numerous clients, none of whom indicated an unwillingness to continue to do business with the plaintiff and plaintiff's company, defendant Axcan.

14. Plaintiff began the process of legally changing her name from Daniel Mitchell to Danny Lee Mitchell.

15. In the fall of 2003 plaintiff began to present at work as a female.

16. From the period of November 12, 2003 through and including December 15, 2003 plaintiff was subject to harassment by the employer defendant Axcan as a result of her sex and disability.

17. Defendant employer Axcan discharged the plaintiff on or about January 12, 2004, alleging willful misconduct.

18. When plaintiff subsequently applied for unemployment compensation benefits from the Commonwealth of Pennsylvania, she was approved for benefits.

19. On or about March 1, 2004 plaintiff contacted defendant EEOC to file a complaint about the employer defendant.

20. Plaintiff completed a general information questionnaire and other forms as requested by the EEOC and filed them with the EEOC

21. On or about May 28, 2004 plaintiff received a letter from the EEOC alleging that because her claim was related to her gender identity disorder, the defendant EEOC would not proceed to conduct an investigation.

22. The EEOC subsequently agreed to review the plaintiff's complaint.

23. The EEOC issued a notice of dismissal of rights dated November 24, 2005, which plaintiff received on or about November 27, 2004.

24. Plaintiff has suffered a loss of wages of approximately \$130,000.00.

25. As a result of the conduct of the defendant Axcan, plaintiff has been substantially harmed. In addition to the financial losses which the plaintiff has suffered, she has also suffered emotional distress, embarrassment and humiliation.

COUNT I - VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

26. Plaintiff incorporates by reference the averments contained in the proceeding paragraphs 1 through 25 as if fully set forth herein.

27. Defendant Axcan has intentionally and willfully engaged in a series of unlawful acts, practices, policies and procedures in employment, benefits, promotion and retention in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 200e.

28. During the fall of 2003, plaintiff suffered depression due to her gender identity disorder.

29. On or about October 26, 2003, the plaintiff informed John Hanna of Axcan of her GID and her depression.

30. In a meeting on or about November 12, 2003, Leonard DuFord, a supervisor of Ms Mitchell and an employee of the defendant, told Ms Mitchell the employer would increase its review of plaintiff's job performance due to her GID.

31. DuFord told Ms Mitchell to move elsewhere and find other employment during her treatment for GID and that it would be easier for Ms Mitchell and the other employees of the defendant if Ms Mitchell voluntarily left employment.

32. In a telephone conversation with Ms Mitchell, Martha Donze of the defendant employer, told Ms Mitchell to be silent with other employees about GID, to maintain a low profile among co-workers, and to stay alone and use a separate bathroom at the employer's national sales meeting.

33. Donze also told Ms Mitchell that Ms Mitchell had to keep Ms Donze apprised of her medical care and treatment.

34. On or about December 12, 2003, the plaintiff became aware that the employer was secretly checking up with Ms Mitchell's accounts about her GID.

35. On or about December 29, 2003, the plaintiff was involved in a minor motor vehicle accident while operating a company-owned vehicle. The plaintiff was not cited by local authorities for any violations of the Pennsylvania motor vehicle code or of the criminal code.

36. Other employees of the defendant have had such accidents and were not terminated by the employer.

37. On January 12, 2004, the defendant employer discharged Ms Mitchell.

38. Defendant employer's conduct created a hostile work environment.

39. Defendant employer discriminated against the plaintiff in clear violation of the Title VII of the Civil Rights Act.

40. Plaintiff has been directly harmed as a result of these violations as set forth above.

COUNT II - VIOLATION OF PENNSYLVANIA HUMAN RELATIONS ACT

41. Plaintiff incorporates by reference the averments contained in paragraphs 1 through 40 as if fully set forth herein.

42. The employer defendant Axcan has intentionally and willfully engaged in a series of unlawful acts, practices, policies and procedures in employment, promotion, benefits and retention in violation of the Pennsylvania Human Relations Act, 43 P.S. § 951.

43. Plaintiff has been directly harmed as a result of these violations as set forth above.

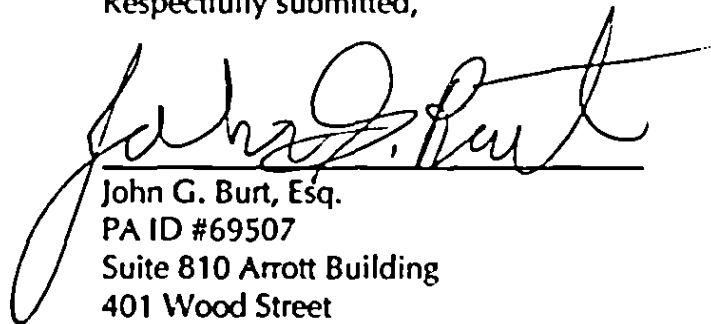
PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that this honorable court will

- a. Assume jurisdiction herein;
- b. Declare defendant Axcan's conduct to be unlawful and in violation of plaintiff's rights;
- c. Grant plaintiff an order requiring defendant Axcan to make her whole, providing for monitoring of the defendant's employment practices and prohibiting the defendant from allowing sex and disability discrimination to factor into its employment decisions;
- d. Award plaintiff compensatory damages, including back pay, front pay, lost fringe benefits, pension and other benefits and any other emoluments of employment, plus interest;

- e. Award plaintiff compensatory damages for emotional distress, embarrassment and humiliation;
- f. Award plaintiff punitive damages;
- g. Award plaintiff costs and attorney's fee; and
- h. Grant such other relief as the court deems just and appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John G. Burt", is written over a horizontal line.

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